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September 16, 2002

United States Department of the Interior
Minerals Management Service
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Attention: Rules Processing Team

American Petroleum Institute Comments Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Geological and Geophysical (G&G) Explorations Of the Outer Continental Shelf – Proprietary Terms and Data Disclosure Proposed Rulemaking. 67 FR 46942 (July 17, 2002)

Ladies and Gentlemen:

The American Petroleum Institute (API) is pleased to comment to the Minerals Management Service (MMS) on the proposed rulemaking covering portions of 30 CFR Parts 250 and 251 concerning geological and geophysical operations on the Outer Continental Shelf. API is a national trade association that represents more than 400 companies engaged in all aspects of the oil and natural gas industry in the United States, including exploration, production, refining, distribution and marketing. A significant percentage of domestic oil and gas produced by API members comes from the Gulf of Mexico and other offshore areas. Accordingly, API has an interest in this proposed rule.

First, MMS proposes to change the time frame in which geophysical and geological (G&G) data and information will be kept confidential by the agency. The success of the OCS Leasing Program depends in part on the exchange of sensitive confidential information between lessees and MMS. Lessees must be assured that the confidential G&G information (including older reprocessed data) they must submit to MMS to obtain certain permits will remain confidential for a reasonable period of time after MMS issues the applicable permits. While MMS considers the current record keeping requirements for managing this data to be complicated and burdensome, industry urges MMS to consider remedies other than a premature release of reprocessed data. Alternatively, industry urges MMS to consider establishing a uniform period of time that would apply to maintaining all confidential data. Industry suggests a time period of forty (40) years that would run from the date the permit is issued. This approach would also protect the economic investment made by seismic companies in acquiring and selling data to companies interested in OCS exploration and production.

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MMS also proposes to grant limited access and inspection of geological and geophysical data and information to persons with a direct interest in related MMS decisions and issues. Industry urges MMS to balance its need for confidential geophysical and geological data and information with the provider's need to have this information kept confidential for a reasonable time. API suggests that MMS's proposed criteria for determining limited access is vague, overbroad, and would allow competitors to see data that the lessee seeks to keep confidential. Access to such information, even if it were not shared with other companies, would give the second company an unfair advantage.

For ease in reviewing API's comments, following the MMS format, attached are suggested specific changes to the proposed rule along with additional comments in italics. Text deletions are indicated and new language is highlighted. Some modifications clarify the text of the proposed rule to address misunderstandings that could arise from the proposed wording; other modifications address basic concepts.

API appreciates the opportunity to comment to MMS on this proposed rule. If you have questions, please contact Linda Bauch of API's Upstream Department at 202-682-8170.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Kenneth Leonard". The signature is fluid and cursive, with a large, stylized "V" and "K" at the beginning.

V. Kenneth Leonard
Senior Manager, Upstream

Attachment

API SUGGESTED CHANGES TO 30 CFR 250 AND 251

PART 250--OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. §1331 et seq.

2. In Sec. 250.196 the following changes are made:

- A. Revise the section heading as set forth below.
- B. Revise the introductory paragraph as set forth below.
- C. Revise the introductory language in paragraph (b) as set forth below.
- D. Remove line item (1) from the table in paragraph (b); redesignate line items (2) through (10) as (1) through (9) respectively; and revise redesignated line (9) to read as set forth below.
- E. Add new paragraph (c) to read as set forth below.

Sec. 250.196 Data and information to be made available to the public or for limited inspection.

MMS will protect data and information that you submit under this part, and part 203 of this chapter, as described in this section. Paragraphs (a) and (b) of this section describe what data and information will be made available to the public without the consent of the lessee and under what circumstances and in what time period. Paragraph (c) of this section describes what data and information will be made available for limited inspection without the consent of the lessee and under what circumstances.

* * * * *

(b) MMS will release lease and permit data and information that you submit, but that are not normally submitted on MMS forms, according to the following table:

If	MMS will release	At this time	Special provisions
(9) Data and information acquired by a permit under part 251 are submitted by a lessee under 30 CFR part 203 or part 250 and retained by MMS.	G&G data, analyzed geological information, processed and interpreted G&G information.	Geological data and information: 10 40 years after MMS issues the permit: Geophysical data: 50 40 years after MMS issues the permit: Geophysical information: 25 40 years after MMS issues the permit.	None.

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API Comment: API urges MMS to consider establishing a uniform period of time to hold all data (base and reprocessed) confidential. Such a period could be forty (40) years starting from the time the permit is issued. Older geophysical data is frequently reprocessed with new techniques so that it can still be used. Under the MMS-proposed rule change, a company that reprocesses older data could have a much shorter time during which MMS would keep the data confidential. Reprocessing data can be costly, and under the proposed change, competitors could gain access to the data in as few as two years. Companies contemplating reprocessing older data as part of the decision-making process would have to consider the possibility that the reprocessed data could be requested by MMS and ultimately made available to potential competitors.

(c) MMS may allow limited inspection, in the MMS office where the data or information is stored, but only to persons ~~with a direct interest in related~~ who will be directly affected by MMS decisions and issues and who agree in writing prior to disclosure to maintain the confidentiality of the G&G data and information disclosed or discussed which was previously submitted under this part or part 203 of this chapter by the permittee or his/her assignee and that MMS uses

API Comment: Proposed modifications provide clarity and further define the limitations that would be placed on disclosed data and information.

- (i) To make unitization determinations on two or more leases;
- (ii) To make competitive reservoir determinations;
- (iii) To ensure proper plans of development for competitive reservoirs;
- (iv) To promote operational safety;
- (v) To protect the environment;
- (vi) To make field determinations; or
- (vii) To determine eligibility for royalty relief.

Under no circumstances will MMS allow the inspection of any non-public G&G data or information by any person covering any leased or un-leased acreage not directly associated with the MMS decision(s), including but not limited to regional studies or geological trend analysis partly or wholly based on such non-public data or information. In addition, under no circumstances will MMS allow the inspection of any G&G data or information of an interpretive nature submitted by any permittee under the provision stated in this chapter. Any person submitting G&G data and information to MMS may request in writing that inspection of such data and information not be allowed during the remainder of the time period the G&G data and information remains restricted from public access as provided in this chapter.

API Comment: Proposed changes would ensure that G&G data and information submitted to MMS prior to such data becoming public is not inadvertently disclosed to a third party, thereby giving away a competitive advantage the generator of the data or information would potentially enjoy during the time the data or information was unavailable for public inspection. For example, disclosure of a portion of a newly drilled well log in a unit discussion could result in

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subsequent leasing or drilling activity by the company inspecting the log that would not otherwise take place, had the company not seen the log.

PART 251--GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

3. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. §1331 et seq.

4. In Sec. 251.14 the introductory language in paragraph (b) is revised, the table in paragraph (b)(1) is revised, and paragraph (b)(3) is added to read as follows:

Sec. 251.14 Protecting and disclosing data and information submitted to MMS under a permit.

* * * * *

(b) Timetable for release of G&G data and information that MMS acquires. MMS will release or disclose data and information that you or a third party submit and MMS retains in accordance with paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) * * *

If you or a third party submit and MMS retains	The Regional Director will release them to the public
(i) Geological data and information	10 <u>40</u> years after MMS issues the permit.
(ii) Geophysical data	50 <u>40</u> years after MMS issues the permit.
(iii) Geophysical information....	25 <u>40</u> years after MMS issues the permit.

API Comment: *API urges MMS to consider establishing a uniform period of time to hold all data (base and reprocessed) confidential. Such a period could be forty (40) years starting from the time the permit is issued. Older geophysical data is frequently reprocessed with new techniques so that it can still be used. Under the MMS proposed change, a company that reprocesses older data could have a much shorter time during which MMS would keep the data confidential. Reprocessing data can be costly, and under the proposed rule change, competitors could gain access to the data in as few as two years. Companies contemplating reprocessing older data as part of the decision-making process whether or not to bid on a lease would have to consider the possibility that the reprocessed data could be requested by MMS and ultimately made available to potential competitors.*

* * * * *

(c) MMS may allow limited inspection, in the MMS office where the data or information is stored, only to persons ~~with a direct interest in related~~ who will be directly affected by MMS decisions and issues and who agree in writing prior to disclosure to maintain the ~~to~~

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confidentiality of **the** G&G data and information **disclosed or discussed that was previously submitted under this part or part 203 of this chapter by the permittee or his/her assignee** and that MMS uses.

- (i) To make unitization determinations on two or more leases;
- (ii) To make competitive reservoir determinations;
- (iii) To ensure proper plans of development for competitive reservoirs;
- (iv) To promote operational safety;
- (v) To protect the environment;
- (vi) To make field determinations; or
- (vii) To determine eligibility for royalty relief

***API Comment:** API's proposed modifications provide clarity and further define the limitations that would be placed on disclosed data and information. MMS's proposed criteria for disclosing information to third parties is too broad and could provide competitors with ample opportunity to determine—at no cost—what data a competitor sought to keep confidential. If the data is licensed from a third party, such as a seismic company, the competitor could obtain and analyze the data without obtaining its own license, thereby depriving the data owner of the economic benefits derived from creating the data. Industry recognizes that MMS must acquire proprietary information from the lessee in order for the agency to make informed decisions. However, the possibility that MMS could release highly confidential data and other information to competitors and other groups, based on overbroad criteria, would impede the flow of information between MMS and the lessee. Lessees would have to consider the impact of possible disclosure of key data and information when deciding whether or not to seek permits.*

Under no circumstances will MMS allow the inspection of any non-public G&G data or information by any person covering any leased or un-leased acreage not directly associated with the MMS decision(s), including but not limited to regional studies or geological trend analysis partly or wholly based on such non-public data or information. In addition, under no circumstances will MMS allow the inspection of any G&G data or information of an interpretive nature submitted by any permittee under the provision stated in this chapter. Any person submitting G&G data and information to MMS may request in writing that inspection of such data and information not be allowed during the remainder of the time period the G&G data and information remains restricted from public access as provided in this chapter.

***API Comment:** Proposed modifications provide clarity and further define the limitations that would be placed on disclosed data and information.*